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09/835,779	04/16/2001	Terry L. Long	2127/5/00	9467

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EXAMINER

MADSEN, ROBERT A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 05/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/835,779

Applicant(s)

LONG, TERRY L.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 4 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kurz (US 2027596). See Figures, Column 1, line 40 to Column 2, line 42, and that the assembly can be handled by consumers yet endures both handling and packing (Column 3, line 33-40).

3. Claims 10, 11, 13, 15, 17, and 18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kurz (US 2027596). See Figures, Column 1, line 40 to Column 2, line 42, and wherein the assembly exists in both a raw and cooked form.

4. Claims 10, 11, 13, 15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lamb (US Re26796). See Figure 1, Column 1, lines 30-50, Column 3, line 60 to Column 4, line 22, Column 5, lines 8-17, 42-54, and Column 12, lines 50-62.

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5. Claims 10,11,13,14,17,18,20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Turpin (US 5096723). See Column 3, lines 44-54, Column 4, lines 22-48, Figures.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3,7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurz (US 2027596), Hilton et al. (US 4052838), Fairbank (US 2555585), and Birdseye (US 1852228).

8. Kurz teaches cutting potatoes into uniform rectilinear shapes that are stacked close together and can endure handling and packaging without undue loss. Kurz is silent in teaching the packaging minimizes the effects of air and minimizes the space required as recited in claims 1 and 7, purging the air with an inert gas as recited in claims 2 and 8, or freezing the contents of the package as recited in claims 3 and 9 (See Figures, Column 1, line 40 to Column 2, line 42 Column 3, line 33-40).

9. Hilton et al. teach it is notoriously well known in the art that a benefit of forming uniformly shaped potato products is the products may be packaged in relatively small packages that are more or less air tight, in an inert atmosphere to improve the shelf-life. (Column 1, lines 10-55). Fairbank teaches uniformly rectangular food pieces have the

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advantage that the food can be packaged in a way to minimize the space required and minimize the exposure to air during storage (Column 1, lines 1-41, Column 4, lines 6-17). Birdseye also teaches minimizing packaging air space for vegetables to enhance the durability of the packaged vegetables and further teaches freezing for storage (Page 1, lines 1-56, Page 2, lines 25-44).

10. Therefore it would have been obvious to modify the Kurz packaging to minimize the effects of air and minimize the space required, as recited in claims 1 and 7, as well as to flush with an inert gas, as recited in claims 2 and 8, since it is notoriously well known in the packaging art that uniformly shaped potato products, including rectangular shapes have the advantage of being capable of packaged to minimize space and air exposure, by flushing with an inert gas, to provide a longer shelf life than non-uniform shaped potato products. One would have substituting one type of packaging for another for the same purpose packaging stacked uniformly shaped potato products. It would have been further obvious to freeze the package, if one desired, since the package since it was known to freeze a vegetable package with a minimum air space to enhance the durability of the vegetable.

11. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurz (US 2027596) as applied to claim 1 above, further in view of Hilton et al. (US 4052838), Fairbank (US 2555585), and Birdseye (US 1852228).

12. Claims 5 and 6 have the same limitations as claims 2,3,8, and 9 and are rejected for the same reasons discussed above in the rejection of claims 2,3,8,9.

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13. Claims 12 is rejected under 35 U.S.C. 103(a) as being unpatentable Kurz (US 2027596) as applied to claims 10, 11, 13,15,17, and 18 above.

14. Although Kurz is silent in teaching any particular type of potato, it would have been obvious to use white potatoes, since it is notoriously well known in the art to use white potatoes as to form fried rectangular potato pieces.

15. Claims 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable Kurz (US 2027596) as applied to claims 10, 11, 13,15,17, and 18 above, further in view of Lamb (US Re26796) and Marshall et al. (US 3924012).

16. Regarding claims 14 and 16, Kurz is silent in teaching frozen potatoes, or a partially cooked potatoes. Lamb also teaches cutting potatoes into uniformly rectangular pieces that are intended to be fried. Lamb teaches it is conventional to partly cook and freeze uniformly rectangular potatoes as recited in claims 14 and 16, where the consumer completes the frying process (Column 1, lines 30-50). Bradley et al. also teach uniformly rectangular vegetable pieces, but the raw vegetables are partially cooked and frozen, then cut into uniformly rectangular pieces (Abstract, Figures 4-6, Column 1, lines 5-17, Column 2, lines 30-45, Column 3, line 1 to Column 4, line 36).

17. Therefore it would have been obvious to modify Kurz and partially cook or freeze the stack assembly since Lamb and Bradley both teach partially cooking and freezing uniformly rectangular vegetable pieces as conventional preparation steps, either before or after cutting into uniformly rectangular pieces.

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18. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable Kurz (US 2027596) as applied to claims 10, 11, 13,15,17, and 18 above, further in view of Fairbank (US 2555585).

19. Kurz is silent in teaching any particular type of packaging. Fairbank teaches a conventional packaging for a stacked uniformly rectangular food that protects the food during storage and is easy to fill is a carton covered by a bag, as recited in claims 19 and 20 (See Figure 4, Column 1, lines 1-10,31-41). Therefore, it would have been obvious to modify Kurz and use a carton and a bag since these are conventional packages for protecting stacked uniformly rectangular food and easy to fill. One would have been substituting one conventional package for another for the same purpose: protecting stacked uniformly rectangular food.

20. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable Kurz (US 2027596) as applied to claims 10, 11, 13,15,17, and 18 above, further in view of Croft (US 6074677).

21. Kurz is silent in teaching a carton lined with plastic. Croft is relied on as evidence of packaging a stacked array of uniformly rectangular potato pieces in a plastic lined carton to vacuum pack the potato pieces to seal the pieces from the atmospheric air (Column 1, lines 1-40,Column 2, line 57 to Column 3, line 20). Therefore, it would have been obvious to modify Kurz and pack the potatoes in a plastic lined carton since it was known to provide a barrier from atmospheric air (i.e. better preserve the potatoes) and

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one would have been substituting one known packaging for another for the same purpose: packing stacked uniformly rectangular potato-derived pieces.

**Conclusion**

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rosenberger (US 6210733 B1) and Whitehouse et al. (US 6521280 B1) teach forming and stacking uniform rectangular food pieces. Smith et al. (US 3654745) teach packing/stacking uniform rectangular pieces.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen  
Examiner  
Art Unit 1761  
May 8, 2003

*Steve Weinstein*  
**STEVE WEINSTEIN**  
**PRIMARY EXAMINER** 1761  
5/17/03